REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,
~~Office Of Commissioner Of Central Excise,Customs,Service Tax,~~ Allahabad-211001

Dated: 06/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70020 /2015- dated 17/09/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/1148/2009	THE SIMBHAOLI SUGAR MILLS LTD SIMBHAOLI, DISTT-GHAZIABAD(UP).

Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, MEERUT II OPP SAHEED PARK, DELHI ROAD, MEERUT..

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Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH KAMALJEET SINGH,ADV
J-144, PATEL NAGAR-1
GHAZIABAD(UP)

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121006 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CIRCUIT BENCH AT ALLAHABAD

Appeal No. E/1148/2007

(Arising out of Order-in-Original No. 36-46/Commr/MRT-II/2006 dated 9.11.2006 passed by the Commissioner of Central Excise, Meerut-II).

For approval and signature:

Hon'ble Shri P.S. Pruthi, Member (Technical)
Hon'ble Shri S.S. Garg, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Departmental authorities?	:	Yes

M/s The Simbhaoli Sugar Mills Ltd. — Appellant

Vs.

Commissioner of Central Excise, Meerut-II — Respondent

Appearance:

Shri Kamaljeet Singh, Advocate — for Appellant

Shri Rajiv Ranjan, Jt. Commissioner (AR) — for Respondent

CORAM:

SHRI P.S. PRUTHI, MEMBER (TECHNICAL)
SHRI S.S. GARG, MEMBER (JUDICIAL)

Date of Hearing: 17.09.2015

Date of Decision: 17.09.2015

Final ORDER NO. 70020/2015

Per: P.S. Pruthi

This appeal is filed against Order-in-Original No. 36-46/Commr/MRT-II/2006 dated 9.11.2006 passed by the Commissioner of Central Excise, Meerut-II.

2. During the year 2003-04 to 2005-06, the appellant filed applications seeking remission of duty on account of molasses said to have been lost during storage, under Rule 21 of the Central Excise Rules. The Asstt. Commissioner reported that the shortages of molasses which was lost is within the prescribed limit of 2% year-wise. The adjudicating authority recorded that in terms of Board Circular F. No. 40/73-CX-I and F.No. 21/29/65-CX4, the first intimation regarding loss should be sent within 24 hours of the occurrence to facilitate verification of the loss. The adjudicating authority, in view of the fact that the appellant could not furnish the date of information about the loss in each case, rejected the applications for remission of duty.

3. Heard both sides.

4. We find that copies of applications for remission of duty are submitted along with the appeal. The learned AR appearing for Revenue stated that there is no proof of such applications having been submitted. Therefore, the question arises before us whether these applications were indeed submitted. We note that the impugned order states in the very first paragraph that "briefly stated the facts are that M/s Simbhaoli Sugar Mills filed the under mentioned applications seeking remission of

duty on account of molasses lost during storage." The adjudicating authority has rejected the applications on the ground that date of submission of the application was not furnished to her. Therefore, at this stage, it is to be accepted that the applications were indeed submitted.

5. Once the applications are taken to be submitted, it is for the department to make investigation if required. The learned Counsel states that the verification of shortage is also done by the UP State Excise authorities. The adjudication order does not reject such contention. Remission of duty in terms of Rule 21 is permissible subject to the satisfaction that the goods are lost by natural causes. Even if the applications were not submitted within the prescribed time , although Revenue has not been able to show us the Board Circulars (supra), no evidence is on record to show that the loss did not occur. It is also not on record whether during the three year period in question, the unit was ever visited by officers of the Audit etc. and whether any effort to investigate was made. The substantive benefit cannot be denied on the technical ground that the information was not given to the Revenue within 24 hours. Reliance is placed on the CESTAT judgment in the case of *Oswal Overseas Vs. Commissioner - 2008 (225) ELT 271 (Tri-Del)* and *Seksaria Biswan Sugar Factory (P) Ltd. Vs. Commissioner of Central Excise, Lucknow -- 2005 (179) ELT 363 (Tri-Del).* In the former judgment it is held that the intimation to Revenue is only in the case of loss of destruction of goods by natural cause or accident. In the case at hand, there is no such accident. Further, it is not disputed that the loss is within the prescribed limit of 2%. Rule 21 does not lay down any procedure for giving information within 24 hours. Therefore, the substantive benefit cannot be denied in the statute by prescribing time limit of 24 hours, which is not laid down in law.

6. Appeal is allowed.

(Dictated and pronounced in Court)

(S.S. Garg)
Member (Judicial)

(P.S. Pruthi)
Member (Technical)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001